

**INTERIM GAMBLING LICENSES**  
(AB 293 (MENDOZA), CHAPTER 233, STATUTES OF 2009)  
CGCC-GCA-2011-01-R

**COMMENTS AND RESPONSES FOR PROPOSED REGULATIONS**

**A. 45-DAY COMMENT PERIOD ENDING AUGUST 29, 2011**

The following written comments/objections/recommendations were received regarding the proposed action during the 45-day comment period that commenced on July 15, 2011 and ended on August 29, 2011:

1. Section 12349, subsection (a), paragraph (3), would define a “New owner” as a person who is a receiver, trustee, beneficiary, executor, administrator, conservator, successor in interest, or security interest holder for a gambling enterprise that becomes the owner of a gambling enterprise as a result of a qualifying event.

**a. David Fried – California Gaming Association (CGA):** The definition of “new owner” restricts new owners to persons such as “a receiver, trustee, beneficiary, executor, administrator, conservator...” that become “the owner of a gambling enterprise as a result of a ‘qualifying event.’” Business and Professions Code section 19841, subsection (s), specifically refers to conservators, receivers, etc., but this explicit listing in the statute is inconsistent with the change of ownership requirement in the regulation. With the appointment of a conservator or receiver, there has been no change in ownership of the gambling enterprise. The statute’s listing of receivers and conservators demonstrates that a change in ownership is not required. Rather, in each case there has been a change in control of the ownership interest.

**b. Alan Titus – Artichoke Joe’s:** Some of the positions included in the definition do not involve a change of ownership but a change in control over the ownership interest. This would be true of receivers, conservators, and trustees in bankruptcy.

**Recommended Response (a. & b.):** These comments and recommendations are accepted and the proposed regulation has been amended to accommodate them. [Modified text dated September 8, 2011; pg. 1, lines 15-19.] While the provisions of subsection (s) of section 19841 are not exclusive to a change in ownership, neither are they exclusive to a change in control of an ownership interest. A change of ownership is clearly included in the events contemplated in the statute.

The statute specifically refers to the death of a licensee. Death of a licensee would certainly result in a change of ownership which could involve an individual owner, a successor in interest, a security interest holder, a beneficiary, or a trustee (other than a trustee in bankruptcy). Therefore, it is necessary and appropriate to define and use the term “new owner” in the proposed regulation. The proposed definition of that term has been modified to reference examples of those individuals who might be involved in a change of ownership.

The references to those positions that would only involve a change in control of an ownership interest have been deleted from this definition.

2. Section 12349, subsection (a), paragraph (4), would define a “qualifying event” as an event, such as those described in subdivision (s) of Section 19841 of the Business and Professions Code (death, insolvency, foreclosure, receivership, or incapacity of an owner-licensee), that results in a change in the ownership of a gambling enterprise and prevents the gambling enterprise from conducting gambling operations because the new owner does not hold a valid gambling license. This paragraph also excludes from the definition of a “qualifying event” any planned transaction where a current licensee retains control of gambling operations until approval of the transaction and issuance of a new license by the Commission (e.g., a sale, the transfer of shares, incorporation, etc.).

**a. Bureau of Gambling Control:** Suggest changing “This does not include...” to “A qualifying event does not include...” [Opening phrase of the last sentence, *Specific Language of Proposed Regulations*, June 29, 2011, page 1, lines 28-31.]

**Recommended Response:** This comment and recommendation is accepted and the proposed regulation has been amended to accommodate it. [Modified text dated September 8, 2011; pg. 1, line 25.] This is a minor grammatical change that does not alter the meaning of the originally proposed text, but may be clearer in meaning.

**b. Jade Jaeckle – Game Source, LLC:** The Commission should consider providing that a “qualifying event” include situations where the Commission has decided to revoke a Gambling License, but specifically allowed for a stay of said revocation for the purpose of allowing the original licensee to divest him or herself of their interests. In such circumstances, the original licensee may be financially unable, unwilling, or even barred from continuing daily gambling operations during the stay period.

The recommended change would be to modify the language of paragraph (4) to provide an exception, or at least provide clarity, to the language stating what a “qualifying event” does not include. Our proposal is not in direct conflict with this language since we are discussing a situation where a current licensee is unable to continue gambling operations. The Commission may wish to specifically allow for the issuance of interim licenses in planned or negotiated transactions where the licensee is on limited time and unable or unwilling to continue gambling operations. Allowing a new owner to submit an application for an interim gambling license in this situation is consistent with the policies of the Commission and seems logical given the likely regular licensing of the new owner/applicant in the foreseeable future.

**Recommended Response:** This comment and recommendation is rejected. The sole purpose of this proposed action is to comply with and implement the provisions of subdivision (s) of section 19841. The situation described in this comment is neither expressly nor impliedly addressed in the statute and is not the type of event that would necessitate the issuance of an interim gambling license. In fact, these types of events/situations result from lengthy disciplinary actions and more appropriately fall under

the express exclusion provision for planned transactions.

In the situation described in this comment, as well as in the case of any other planned transaction, the Commission has the discretion to issue temporary licenses should the facts and circumstances of a particular situation demonstrate sufficient cause. Proposed subsection (i) expressly provides that this regulation (Section 12349) shall not preclude the issuance of temporary licenses. Therefore, there is no need to include in this regulation the provisions recommended in this comment.

**c. David Fried –CGA:** Under the proposed definition, a “Qualifying Event” can only be triggered by: (1) “a change in ownership,” and (2) which “prevents the gambling enterprise from conducting gambling operations.” These two conditions are inconsistent with the statute.

First, the change of ownership condition conflicts with express language in section 19841(s) that refers to the need for “gambling enterprises to operate continuously.” Subsection (s) does not condition the interim license on a change in ownership in the gambling enterprise. In fact, it rests on the need for the existing licensed enterprise that owns the card room to continue in operation in cases of, including, but not limited to, incapacity or insolvency. Therefore, by its terms, subsection (s) applies in cases where the gambling enterprise has not been transferred but remains the license holder, but due to a qualifying event, someone must be licensed to act for the existing gambling enterprise so that the enterprise may continue in operation. Any change in control that would affect the ownership interest or the continuous operation of the gambling enterprise should be addressed in these interim licensing regulations even if it does not result in a change in ownership of the gambling establishment.

Second, the regulations condition an interim license on not only a change in ownership, but one which also “prevents the gambling enterprise from conducting gambling operations.” That is also different than what the statute provides. The statute is focused on the continuous operation of the gambling enterprise not the continuous conduct of gambling.

So if the gambling enterprise is a corporation with officers elected annually by the directors or shareholders, the officers can operate the gambling enterprise and continue gambling operations even if the shareholder dies, until the officers’ term of office expires. But if the new shareholders do not receive interim licenses, there is no one to hold an annual meeting, or elect directors or officers when the terms of office end. The corporation cannot long continue in continuous operation without licensed shareholders. The officers also will not be accountable to an owner during the remaining term of office.

**d. Alan Titus – Artichoke Joe’s:** This definition includes some situations covered by the statute but not others. The change in trustees on the death of a trustee involves a change in ownership. Trusts are not entities and the succession of trusteeship constitutes a change in ownership. In the most common situation, a person will create a trust as a will substitute to avoid probate and will transfer all of his or her probate assets into trust. The person will appoint him or herself as trustee and will be the sole beneficiary of the trust during his or her life. On his or her death, a successor trustee assumes office. If the successor trustee has not

previously been licensed, the death of the prior owner and assumption of position by the new trustee would be problematic under the Act.

Similarly, the proposed regulation would apply on the death of a licensee. On an interest-holder's death, he or she no longer holds the interest, but rather that interest passes to his or her estate and to the personal representative appointed by the court. This is a change in ownership.

However, the proposed regulation would not apply to situations involving a change in control over an ownership interest. These include situations where an owner is subject to conservatorship, receivership, or bankruptcy proceedings. In all of these cases, a person is appointed in court proceedings to take control over an owner's interest in a cardroom business, but title remains with the principal. Note that in all of these cases, the control of the conservator, receiver and trustee in bankruptcy is subject to limitations and to overriding control of the courts. Nevertheless, the Commission needs to license the person and the regulation should allow for interim licensing.

**Recommended Response (c. & d.):** These comments and recommendations regarding the change of ownership issues are accepted and the proposed regulation has been amended to accommodate them. [Modified text dated September 8, 2011; pg. 1, lines 21-23.] Please refer to the response to comments 1-a. and 1-b., above.

The comments and recommendations concerning the issue of continuous operation of a gambling enterprise as opposed to continued conduct of gambling operations are rejected. The Commission's focus and concern is the conduct of gambling operations. For the purposes of the proposed regulation, as well as subsection (s) of section 19841, the need for an interim gambling license is directly related to the continuation of gambling operations. An interim gambling license, or even a regular gambling license, is not needed for the continuation of any other portion of a gambling enterprise's business. A gambling license is not required for the operation of a restaurant, a cocktail lounge, a gift shop, a hotel, or any other non-gambling business function or undertaking that a gambling enterprise may be engaged in.

**e. David Fried – CGA:** The Commission has expressed the concern that these regulations not serve as an alternative to regular licensing for ordinary transactions or be used to subvert disciplinary proceedings. These concerns can be addressed in two alternative ways.

First, these concerns are already accommodated in part by the sentence in the draft regulation which states that the regulations are not for use for any planned or negotiated transaction where the current license holder is able to continue operations until the Commission issues a new license.

Second, we suggest that the Commission add to that sentence the restriction that pending disciplinary proceedings are not mooted or stopped by an interim license application or license.

**Recommended Response:** This comment and recommendation is rejected. As stated in this comment, the current language of the proposed regulation adequately addresses the non-applicability of the term “qualifying event” to regular or planned transactions. Further clarification in that regard is not necessary.

With respect to the issue of disciplinary actions, it is sufficient that the definition of a “qualifying event” limit that term to the events specified in subdivision (s) of section 19841, or similar events, to prevent the interim license process from being used to avoid or circumvent disciplinary or other action by the Commission. When there has been an event that falls within the proposed definition, it may be necessary and appropriate to consider issuing an interim license even if disciplinary action is pending. The individual circumstances of each specific instance will need to be considered to determine if an interim license should be granted and, if granted, how that might affect the Commission’s jurisdiction or any pending action. This regulation cannot and should not address those issues as there may be other provisions of law that take precedence.

*See also, response to comment 2-b., above.*

3. Section 12349, subsection (b), would allow gambling operations to continue following a qualifying event, provided that an owner or a licensed person affiliated with the gambling enterprise assumes control of the gambling operations, the Commission is notified of the qualifying event within 10 days, and the new owner submits a request for an interim gambling license, as specified. This regulation would require that gambling operations cease in the event that the interim license request is denied or withdrawn.

**a. Bureau of Gambling Control:** Because neither “owner” or “licensed person” is defined in statute or regulation for purposes of this context, we suggest using the term “owner licensee” as defined in Business and Professions Code section 19805, subdivision (ad). Similarly, we suggest that the term “key employee” as defined in Business and Professions Code section 19805 (x), be used in lieu of “a licensed person affiliated with the gambling enterprise.”

**Recommended Response:** These comments and recommendations are rejected. The use in the proposed regulation of the terms “owner” and “licensed person” is appropriate, accurate and no specific definitions are required. The common meanings of these terms, when considered in the context of both the proposed regulation itself and subsection (s) of section 19841, provide sufficient clarity. The suggested replacement terms (“owner-licensee” and “key employee”), however, are inaccurate and inappropriately limiting.

The term “owner-licensee,” as defined in section 19805 and used in section 19851(a), does not include endorsed owners as provided in section 19851, subdivision (b). The term “owner,” as used in the proposed regulation, is intended to include both an owner-licensee and an endorsed owner, if they are individuals.

The term “key employee,” as defined in section 19805, subdivision (x), means any individual employed in the operation of a gambling enterprise in certain specified capacities. This

would not include individuals who are endorsed licensees pursuant to subdivision (b) of section 19851. The term “licensed person,” as used in the proposed regulation, is intended to include both a key employee and an individual endorsed licensee.

**b. David Fried –CGA:** This section permits a gambling operation to continue if an owner or licensed person has control of the operation. We want to clarify who is included in a “licensed person.” Section 19805(z) defines a license as a gambling license, key employee license or any other license issued by the Commission. Therefore, it is our understanding that a “licensed person” in this regulation means and includes an owner, key employee, or anyone else endorsed on the gambling license who is going to assume control of the gambling enterprise.

**Recommended Response:** This comment and recommendation is accepted. The commenter’s understanding of who is included in “licensed person” is correct. A licensed person, within the meaning of Section 12349, may include key employees, endorsed owners, security interest holders, financial interest holders, community property interest holders, trustees (other than trustees in bankruptcy), beneficiaries, and any other individual endorsed on a gambling license.

In general, “licensed person” would include any individual or entity that the Commission would require to be licensed. However, in the context of subsection (b) of Section 12349, this would be limited to an individual who assumes control of gambling operations. That individual should be someone who has been subject to a background investigation equivalent to that of an owner-licensee and who has been approved by the Commission to perform duties that included oversight of gambling operations and compliance with the statutory and regulatory obligations of a gambling enterprise. Who that might be, specifically, would most likely depend on the relationship between the individual and the gambling enterprise. For example, a landlord who is endorsed on a gambling license as a financial interest holder would probably not assume control of gambling operations as the result of a qualifying event.

*See also, response to comment 3-a., above.*

**c. David Fried – CGA:** Paragraph (1) of subsection (d) provides that the operations will cease if a request for a license is abandoned and no one else has applied for the interim license or been granted a license. This section allows for a substitute or separate application. Subsection (b) requires that gambling operations cease if the interim application is denied or withdrawn and no other person holds an interim or regular license. There is no allowance for the possibility of a substitute application by another person. These sections should be consistent and provide that that the operations will cease if a request for a license is denied, withdrawn or abandoned and no one else has applied for the interim license or been granted a license. For example, a family trust succeeds to ownership. One of the children is the successor trustee and applies for a license. There turns out to be a problem with that application. We should allow that person to resign and for the next child to become the trustee and applicant.

**Recommended Response:** This comment and recommendation is accepted and the

proposed regulation has been amended to accommodate it. [Modified text dated September 8, 2011; pg. 2, lines 7 and 8.] Subsection (b) was modified to be consistent with the similar provision in paragraph (1) of subsection (d).

4. Section 12349, subsection (c), would establish the application process for an interim gambling license. The process includes a requirement that the new owner submit the following to the Commission within 30 days of the qualifying event: a complete application package for a regular gambling license; a written request for an interim license; and a document that evidences the qualifying event. The 30-day application submission requirement could be extended by the Commission or the Executive Director if the new owner or individual in control of an ownership interest, can demonstrate good cause. The length of any extension would be at the discretion of the Commission or Executive Director, based on the specific facts and circumstances of each request.

**a. Jade Jaeckle – Game Source, LLC:** Subsection (b), and paragraph (1) of subsection (d), address the immediate termination of gambling operations when the Commission denies a request for an interim license, approves a request to withdraw an application, or an application is abandoned, and no other person holds a valid interim or regular license, or has applied for or been granted an interim or regular gambling license. Subsection (h) describes the procedure for cancellation of an interim gambling license. The proposed regulations as a whole do not adequately address the issue of a subsequent applicant for an interim gambling license, following the disqualification, abandonment, or denial of an application, or the cancellation of an interim license.

In the interest of maintaining gambling operations, a subsequent applicant should be allotted a reasonable amount of time to submit an application for an interim gambling license. If for example, the intended regular licensee/interim license applicant withdraws or is found to be otherwise ineligible, immediate arrangements may need to be made in order to maintain the gambling establishment as a going concern. In such a case, a new owner/applicant may step in to control the gambling operation. However, there does not appear to be a provision allowing a subsequent owner the opportunity to submit an application for an interim license, following the denial or cancellation of another interim licensee or applicant. It would be counterintuitive to think that another individual would have already applied for an interim gambling license if there was no reason to believe that the first new owner/applicant for an interim gambling [license] would not receive such a license.

Our proposal would be that in the circumstance of a denial, cancellation or abandonment of an interim license or application, that a subsequent owner have the same deadlines and timelines to apply for an interim gambling license that would be extended under subsection (c) to an original interim license applicant. By allotting a small window of time, the Commission would prevent the termination of gambling operations as well as the potential prejudice to a subsequent license applicant.

**Recommended Response:** This comment and recommendation is rejected. The proposed regulation already includes provisions that address the concerns expressed in this comment

and additional provisions or modifications are unnecessary. In the case of an abandonment under paragraph 1 of subsection (d), the applicant would have been given at least 10 days notice in the request for additional information that precedes the abandonment determination. In the case of a denial under paragraph (2) of subsection (d), the applicant would be given at least 10 days notice of staff's recommendation that the Commission deny the application. In the case of a cancellation of an interim license under subsection (h), the interim license holder will have at least 30 days advance notice of the impending cancellation, and will have an opportunity to respond. In each of these instances, there is adequate notice provided to enable another individual to either complete and submit a new application and request an interim license, or to request an extension of time pursuant to paragraph (2) of subsection (c), as modified in response to comment 4-b., below. In the case of an application withdrawal, no notice is necessary as the request would come from the applicant who can reasonably be expected to know in advance that another application will be required.

**b. David Fried – CGA:** With respect to the 30 day application deadline, there should be discretion for the Commission to grant exceptions for good cause *retroactively*, such as where the applicant lacked actual knowledge of the qualifying event, or even knowledge that they were an heir or beneficiary. The regulation appears to contemplate extensions of time. A slight change is needed to allow for retroactive extensions of time. For example, the beneficiary of a trust dies or the settler of a trust dies making part of the trust irrevocable. As a result, there are now new beneficiaries, which may include charities and minor children who take under a separate trust. Under Probate Code section 16061.7(f), the trustee has 60 days to serve notice on the beneficiaries or heirs. This is delayed even further if the deceased was also the trustee.

As a result, the Commission's power to extend the 30 day application deadline should be retroactive as well.

**Recommended Response:** This comment and recommendation is accepted and the proposed regulation has been amended to accommodate it. [Modified text dated September 8, 2011; pg. 2, lines 17 and 18.] This modification not only addresses the retroactivity issues expressed in this comment, but also makes allowance for subsequent applicants in the circumstances discussed in comment 4-a., above.

5. Section 12349, subsection (d), would specify that a request for an interim gambling license is ancillary to, and concurrent with, an application for a regular gambling license. This subsection would also set up various timelines for the interim license application process, as specified, and would require that gambling operations be terminated if an application for an interim license is abandoned by the applicant and no other person has applied for or obtained an interim or regular gambling license. Finally, this subsection would prohibit the approval of a request for an interim gambling license if any factor is disclosed that would disqualify the applicant for a regular license.

**a. Bureau of Gambling Control:** Subsection (d) references Section 12342 relating to processing times for regular gambling license applications. The applicable provision is contained in Section 12343.



**Recommended Response:** This comment and recommendation is rejected. Section 12342 is, in fact, the correct reference. Section 12343 no longer exists. Section 12343 was repealed and its provisions amended into Section 12342, effective May 13, 2010.<sup>1</sup>

**b. Bureau of Gambling Control:** The wording in subsection [(d)](2), "...if the applicant meets any of the disqualifying criteria in section 19859..." appears incongruous because "meeting criteria" tends to be used to mean "fulfilling requirements." We suggest the wording "if the applicant is disqualified for any reason set forth in section 19859."

**Recommended Response:** This comment and recommendation is accepted and the proposed regulation has been amended accordingly to accommodate it. [Modified text dated September 8, 2011; pg. 3, lines 1 and 2.]

**c. Bureau of Gambling Control:** Subsections (d)(2) and (h) refer to the criteria in section 19859 of the Business and Professions Code as a basis for disqualification. While we agree that such criteria should apply, it should be recognized that under the proposed regulations the Bureau would not conduct a full background investigation and, therefore, normally would not identify and report such disqualifying information for the Commission's consideration of an interim license. The Bureau would notify the Commission of such information only as it relates to the fingerprint-based criminal history check.

**Recommended Response:** It is fully understood that the Bureau would likely not be able to complete a full background investigation for the Commission's consideration of an interim gambling license application. This was considered in the development of the proposed regulations. While it was, and is, acknowledged that the available background information would generally be limited to the criminal background information obtained as the result of Live Scan (fingerprint) criminal background check, the regulation should not preclude the Commission from considering other disqualifying information that may already be known or otherwise comes to their attention. The application for a regular license itself might contain information that calls attention to issues that should be investigated and evaluated before an interim gambling license is granted. The current provisions of the regulation clearly permit the Commission to take into consideration all available information and modification of the current language is not necessary.

6. Section 12349, subsection (f), paragraph (7), would set as a condition of an interim license that the authorization of additional permanent tables would be prohibited during the term of an interim gambling license.

**a. David Fried – CGA:** Rather than barring the addition of new tables, we would suggest a restriction on the addition of new tables fixed by a percentage and a cap. Initially, regardless of this regulation, local table limits will restrict adding tables for most clubs. But for those that do not have their maximum number now, there may be legitimate reasons to add tables. Sometimes a club will add a table because they are trying a new game, or are under competitive pressure to add a new game that another club has added. Or, they may need a

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<sup>1</sup> See OAL File No. 2010-0301-01 S

new table merely because their twice weekly poker tournament has gotten more popular. They may also have made capital investments in adding space for new tables when an unexpected qualifying event occurs. If the persons with interim permission to act as the owner licensee can operate 20 tables, why can't they operate 21? If an interim licensee, as a licensee, can have a new game approved, why wouldn't they be allowed to ask for and receive the new table for the new game? Perhaps if the Commission is not concerned with the adding of one table, but of many, we could limit the number of tables by percentage. That is, restrict the increase to the lesser of 15% of prior tables or 15 tables, and clubs with 10 or fewer tables can add up to one. So clubs with 100 tables or more cannot add more than 15 tables. A 25 table club can add no more than 3. A 14 table club could add 2. A club with 1-10 tables can add no more than 1.

**Recommended Response:** This comment and recommendation is accepted and the proposed regulation has been amended to accommodate it. [Modified text dated September 8, 2011; pg. 3, lines 8-11.] Rather than add another set of criteria and calculations to the existing requirements and limitations for determining the number of additional tables allowed, this condition has been removed. The current process for requesting Commission approval to increase the number of tables a cardroom is authorized to operate will continue to be applicable and any concerns the Commission may have regarding the addition of authorized tables can be properly addressed through that process.

7. Section 12349, subsection (f), paragraph (10), would set as a condition of an interim license that any proceeds from the gambling operation that would otherwise be payable to a new owner be held in escrow until the disposition of ownership interest has received Commission acknowledgement and a regular gambling license is approved. An exception would be allowed for the payment of any taxes, operating expenses, preexisting obligations or preexisting dependant support.

**a. Jade Jaeckle – Game Source, LLC:** We believe that additional clarification, and perhaps more generous allowances, are in order. To maintain the gambling operation, an interim licensee may need to not only pay preexisting obligations, but may also need to enter into, assume and pay for new obligations, contracts, etc. Per existing regulations, entering into certain contracts, such as contracts to provide third-party proposition player services, would of course, require Bureau approval and contract submission to the Commission.

It is worth noting and specifically allowing for the inevitable changes that a new owner/interim licensee may need to make. It is important that a general and broad discretion be given to owners in matters relating to the day-to-day operations, providing of course that all laws and regulations are complied with. Owners must be allowed to enter into new obligations that are reasonable [and] necessary to the operation of the gambling establishment.

The regulations may also need to address the issue of assumptions of contracts by the new owner. If for example, the previous provider of third party proposition player services is acceptable to the new owner, and the applicable contract is assumed, would

another approval be required? If so, perhaps there should be expedited approval per §12200.10A. There may be other types of contracts that would be assumed as well.

In other words, the language of subsection (f) should provide that an interim licensee holds all of the powers of a regular licensee, with the exception of the following narrow conditions... It should also provide for enough latitude that a new owner is able to operate the gambling establishment in a viable manner.

**Recommended Response:** This comment and recommendation is rejected. The overall purpose of the proposed regulations is to allow a gambling enterprise to continue its gambling operations after the occurrence of a qualifying event, as specified. The intent of this particular condition is to maintain the status quo during the time it takes to fully background an individual for a regular gambling license. While that individual may hold an interim gambling license during that period, it is not known whether he or she will ultimately qualify for the regular license. Therefore, certain limitations are necessary and appropriate to safeguard the assets of the gambling enterprise.

Almost all of the situations mentioned in this comment would fall within one or more of the specified exceptions. Using the example cited in this comment, an existing third-party proposition player services (TPPS) contract could be categorized as either an operating expense or a preexisting obligation. A modification of an existing TPPS contract would probably be necessary in the case of an assumption of that obligation, but that approval would be dealt with under separate provisions relating specifically to TPPS contracts.<sup>2</sup> Other disbursements or new obligations might require separate Commission approval which would fall under the category of “any other distribution of proceeds that is approved by the Commission.”<sup>3</sup> In short, there appears to be adequate provision in the proposed regulation as written to address these concerns and no further modification is needed.

**b. David Fried – CGA:** We would like to clarify that the proceeds cannot be paid as “a percentage or share of the profits” to the new owner “as an owner.” If the heir was already the General Manager and received a salary, or now has to become the General Manager, salary consistent with what the club paid previously for similar positions should be permitted. Fees and salaries are expenses, rather than part of net profits. Similarly, trustees, receivers and conservators must be paid for their services or they get pretty grumpy. Section 19850 states that a state gambling license is required to receive profits, but “reasonable salaries and fees customary for the gambling enterprise or for the type of position” should be unaffected.

**Recommended Response:** This comment is accepted and has been considered in the adoption of the proposed action. As discussed above, the overall purpose of the proposed regulations is to allow a gambling enterprise to continue its gambling operations after the occurrence of a qualifying event, as specified. The intent of this particular condition is to maintain the status quo during the time it takes to fully background an individual for a regular gambling license. While that individual may hold an interim gambling license during that period, it is not known whether he or she will ultimately qualify for the regular license.

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<sup>2</sup> See Title 4, CCR, Sections 12200.7 – 12200.10C

<sup>3</sup> Section 12349, subsection (f), paragraph (10)

Therefore, certain limitations are necessary and appropriate to safeguard the assets of the gambling enterprise.

Salaries would clearly be considered either an operating expense or a preexisting obligation, depending on the circumstances. Trustees, such as trustees in bankruptcy, receivers and conservators would be compensated according to the terms of their appointment. That compensation, while not necessarily subject to Commission control or approval, would likely be an allowable expense for the continued operation of the business.

8. Section 12349, subsection (f), paragraph (12), provides that, in requesting an interim gambling license, the applicant would agree to the conditions enumerated in this subsection.

**a. David Fried – CGA:** This section immunizes the Commission from any claim that the Commission imposed an illegal condition on an interim license. It states that the “applicant agrees” to the conditions in the regulation when they file the application. Rather, the license should be just issued subject to the conditions as with any other Commission license.

An interim or regular license can contain conditions, and the holder has to operate under those conditions until a judge says otherwise. However, you cannot foreclose in advance when the applicant first files an application the applicant from later challenging a condition as illegal, on its face or even as applied to just their one situation. This is especially true because under subsection (11) the Commission can impose other unspecified conditions. So this section (12) forces an applicant to “agree” to accept conditions under section (11) he or she won’t even know about at the time he or she files the application.

Moreover, the “applicant” might not know until many years from now that they will ever be an applicant, and have no meaningful reason to now participate in this rulemaking. Under section (12), either an applicant has to accept what may be illegal conditions, or forego the license, let the establishment close and then sue the Commission over the imposition of improper conditions. But even inadvertently, the Commission may impose an interim license condition that violates the law or exceeds Commission authority. The Commission has to be responsible in that case like any other agency or government actor that exceeds its authority. The Commission cannot grant itself unlimited unchecked powers, or require an applicant to choose between closing their doors and challenging an invalid condition. This section should be deleted in its entirety.

**Recommended Response:** This comment and recommendation is accepted and the proposed regulation has been amended accordingly to accommodate it. [Modified text dated September 8, 2011; pg. 3, lines 16 and 17.]

9. Section 12349, subsection (g), would require the new owner of a gambling enterprise to provide the Commission with written notification if he or she intends to sell their ownership interest without first obtaining an interim or regular gambling license.

**a. Bureau of Gambling Control:** The Bureau suggests that in subsection (g) the word “immediately” be replaced with a specific number of days. This would better define the

timeframe [in] which a written notification must be submitted.

**Recommended Response:** This comment and recommendation is accepted and the proposed regulation has been amended to accommodate it. [Modified text dated September 8, 2011; pg. 3, lines 20 and 21.] The timeframe in which notification must be made pursuant to subsection (g) has been set to conform to the timeframe specified in paragraph (1) of subsection (c) for submission of the applications for interim and regular gambling licenses. While 10 days (as provided in subsection (b) for notification of the qualifying event) may not allow sufficient time for making necessary decisions, it is reasonable to expect that the initial decision could be made within 30 days.

10. Section 12349(h) would establish a process for the cancellation of an interim gambling license by the Commission when it is determined that the license holder is not qualified to hold a gambling license. The process would include an option for the license holder to request an evidentiary hearing, pursuant to existing regulations.<sup>4</sup>

a. **Bureau of Gambling Control:** *Please refer to Comment and Response 5-c., above.*

11. Relationship to Renewal Process.

a. **David Fried – CGA:** We are unclear on the relationship between these regulations for interim licenses and the Commission’s ordinary renewal process for licensing. Suppose a gambling enterprise is owned by three owners (as shareholders, partners, or members of a limited liability company). Under the ordinary practice, a license renewal is not processed unless all owners have submitted their renewal forms. An incomplete application is delinquent and subject to penalties. Suppose one owner dies and the other two submit their forms and fees on time. What happens in that case?

**Recommended Response:** This comment is accepted and has been considered in the adoption of the proposed action. In the specific scenario suggested in this comment, the two surviving owners would simply submit their renewal applications in a timely manner, as provided in Section 12345, and include a copy of the deceased owner’s death certificate. No penalties would be imposed. If either or both of the surviving owners are individuals as opposed to entities, no interim license would be required to continue gambling operations. The standard licensing processes would be followed in distributing or transferring the deceased owner shares or percentage of interest to the surviving owners or a successor in interest.

There were no further comments, objections or recommendations received within the initial 45-day public comment period regarding the proposed action.

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<sup>4</sup> California Code of Regulations, Title 4, Section 12050, subsection (b)